

<div>CITY OF SAN JOSÉ, CALIFORNIA</div> <div>Department of Planning, Building and Code Enforcement</div> <div>801 North First Street, Room 400</div> <div>San José, California 95110-1795</div> <div>STAFF REPORT</div>		Hearing Date/Agenda Number	
		P.C. 3-27-02 Item:	
		File Number	
		CP00-11-077	
		Application Type	
		Conditional Use Permit	
Council District			
1			
Planning Area			
West Valley			
Assessor's Parcel Number(s)			
381-51-081			
PROJECT DESCRIPTION			
Completed by: Darren McBain			
Location: Northwest corner of Moorpark Avenue and Gullo Avenue			
Gross Acreage: 0.4		Net Acreage: 0.4	
		Net Density: n/a	
Existing Zoning: CP Commercial Pedestrian		Existing Use: Gasoline Service Station	
Proposed Zoning: No change		Proposed Use: Addition of two fuel dispensers	
GENERAL PLAN			
Land Use/Transportation Diagram Designation		Project Conformance:	
Medium Low Density Residential (8.0 DU/AC)		[] Yes [X] No	
		[X] See Analysis and Recommendations	
SURROUNDING LAND USES AND ZONING			
Completed by: DM			
North: Single-family detached residential		R-1-8 Residence	
East: Professional offices		CO Commercial Office	
South: Commercial		CP Commercial Pedestrian	
West: Commercial		CP Commercial Pedestrian	
ENVIRONMENTAL STATUS			
[] Environmental Impact Report		[X] Exempt	
[] Negative Declaration circulated on		[] Environmental Review Incomplete	
[] Negative Declaration adopted on			
FILE HISTORY			
Completed by: DM			
Annexation Title: Blackford 2-A		Date: January 29, 1960	
PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION			
[] Approval		Date:	
[x] Approval with Conditions		_____	
[] Denial		Approved by: _____	
		[X] Action	
		[] Recommendation	
OWNER/APPLICANT/DEVELOPER			
Tosco Marketing Company			
2000 Crow Canyon Place #400			
San Ramon, CA 94583			

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Darren McBain

Department of Public Works

See attached memo

Other Departments and Agencies

N/A

GENERAL CORRESPONDENCE

None received

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Tosco Marketing Company, is requesting a Conditional Use Permit to allow the addition of two fuel dispensers and related site improvements at an existing gasoline service station. The subject property is located at the northwest corner of Moorpark Avenue and Gullo Avenue, on a 0.4-acre site in the CP Commercial Pedestrian Zoning District. Service stations, and expansions thereof, are a conditional use in the CP district. The property is bounded by single-family residential uses to the north, and by commercial and office uses on its other sides.

The applicant is proposing to add two fuel dispensers directly adjacent to the two existing dispensers that are on the site. No additional new pump islands or canopies are proposed. In addition, the proposal includes enhancements to the existing landscaping, closure of a driveway on Gullo Avenue and removal of a free-standing pay phone. Street trees will be added on both project frontages as a standard condition of approval of the project.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project is exempt from further environmental review under the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15301. Under this section, projects such as this which propose only minor alterations and/or additions of up to 10,000 square feet at existing commercially developed sites qualify for an exemption.

GENERAL PLAN CONFORMANCE

The subject site has a General Plan Land Use Transportation Diagram designation of Medium Low Density Residential (8.0 DU/AC). While a commercial use may seemingly not conform to this designation, under General Plan policies an *existing* developed parcel is deemed to conform to the General Plan regardless of how it is designated. While the City of San Jose's status as a Charter City under state law allows approval of projects that do not conform to their General Plan designation, it is this city's practice that projects should

conform. The City consistently requires General Plan conformance for new development on vacant land and those that represent a substantial redevelopment and/or intensification of a site's existing land use. However, conformance is not a strict requirement for minor proposals that involve a relatively minor investment and would not tend to preclude future long-term redevelopment of the site. In the present case, the proposal is for minor, outdoor changes to the existing site layout. No structural changes are proposed, no new outdoor activity will be concentrated near the adjacent residential properties, and the interface with the adjacent residences will be improved with more substantial landscaping and closure of an existing driveway. It is staff's opinion that the proposal would improve the existing land use's compatibility with the adjacent residences, but would not substantially discourage the property's ability to be redeveloped for residential uses in accordance with its General Plan designation at a future date.

ANALYSIS

The primary focus of the analysis is the project's compatibility with surrounding land uses, which are a mix of single-family detached residential, commercial, and professional offices. The site is currently operated as a service station with two fuel dispensers. The business closes at 11:00 PM daily, in keeping with the City's "standard" allowed hours of operation. No expanded hours of operation are included in this permit.

The two additional new fuel dispensers are proposed to be located next to the existing ones, in an area that is approximately 80 feet from the residential property line and buffered from the adjacent residential neighborhood by the on-site gas station building. Placement of the two additional dispensers should not generate an increased level of outdoor activity that would be noticeable to adjacent residents. The applicant has stated that the site previously had a total of four fuel dispensers (two were removed several years ago because of cost considerations) and that the proposal would return the site to its previous configuration.

In addition to the fuel dispensers, the applicant is proposing to increase the size of the landscaped areas along the project frontages and upgrade the landscaping, including approximately 11 trees planted on-site and in the public right-of-way. The driveway closest to the single-family residences on Gullo Avenue is proposed to be closed, and the free-standing outdoor pay telephone on the residential property line will be removed. These measures will considerably improve the property's appearance from the street and its relationship with the nearby residences. The applicant has expressed willingness to provide these improvements.

PUBLIC OUTREACH

Notices for the public hearing were distributed to the owners and tenants of all properties located within 500 feet of the project site. Staff has been available to discuss the project with members of the public.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following facts and findings in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Medium Low Density on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located on a 0.4-gross-acre parcel in the CP Commercial Pedestrian Zoning District.
3. Additions to service stations are a conditional use in the CP Zoning District.
4. The project site is currently developed with a gasoline service station, including two fuel dispensers.
5. The proposed project consists of a minor expansion of the existing use including two additional fuel dispensers and minor site and landscape improvements.
6. The subject site is adjacent to single-family houses.
7. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
8. The proposed project conforms to the setbacks of the CP Zoning District.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The existing land use is deemed to be consistent with the General Plan however, the minor expansion is not technically consistent with the site's designation of Medium Low Density Residential on the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José. The project involves a relatively small investment and should not substantially preclude the redevelopment of the site in the future.
2. The proposed project complies with applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and

2. The proposed site is adequate in size and shape to accommodate the walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled "Tosco Marketing Company Pumpability Project," dated May 30, 2000, on file with the Department of Planning Building and Code Enforcement.
2. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.

3. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work.
4. **Public Works:** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-10084) to the satisfaction of the Director of Public Works.
 - a) **Fees.** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
 - b) **Geology.**
 - i) A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
 - ii) A Soils Report addressing the potential hazard of liquefaction must be submitted and accepted by the City Geologist prior to the issuance of a Public Works Clearance or Grading Permit.
 - iii) This project may qualify for a grading exemption at the grading permit stage.
 - c) **Undergrounding.** The In Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to Moorpark Avenue prior to the issuance of a Public Works Clearance. 100 percent of the base fee in place at the time of payment will be due.
 - d) **Landscape.**
 - i) Install street trees within the public right-of-way along the entire street frontage per City standards.
 - ii) The locations of the street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only.
 - iii) Contact the City Arborist at 277-2756 for the designated street tree.
 - e) **Street Improvements.** Provide the following improvements:
 - i) Remove and replace broken or uplifted sidewalk along the project frontage.
 - ii) Close unused driveway cuts.
 - iii) Remaining driveways to be City of San Jose standard 32 feet or less.
 - iv) Install handicap ramp at the corner of Gullo Avenue.
 - v) Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
 - f) **Minor Improvement Permit:** The applicant will be required to satisfy all Public Works conditions prior to the issuance of a Public Works Clearance. The clearance will require the execution of a Minor Street Improvement Permit that guarantees the completion of the

public improvements to the satisfaction of the Director of Public Works. This permit includes plans, insurance, bonds/deposit certificate, and engineering and inspection fees.

5. **Outside Storage.** No outside storage is permitted for the project except in areas designated on the approved plan set.
6. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
7. **Vehicle Repair.** All vehicle repair activities shall be conducted inside the building. Automobile dismantling activities and outdoor vehicle storage are prohibited.
9. **Hours.** This facility shall be limited to operation between the hours of 7 AM and 11 PM. No 24-hour uses are approved.
10. **Food and Beverage Sales.** No expansion of the sale of food and/or beverages is approved under this permit. The sale of alcoholic beverages is prohibited.
8. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CP00-11-077 shall be printed on all construction plans submitted to the Building Division.
 - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
11. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
12. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
13. **Fire Flow.** Required fire flow for the site is 2,500 gpm, or as otherwise approved in writing by the Fire Chief.
14. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
15. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored within approved buildings and/or within areas specified on the approved plan set, if any, in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.

16. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.